



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
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Ann F. Jennings
Secretary of Natural and Historic Resources

David K. Paylor
Director
(804) 698-4000

James Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
6801 WOOLRIDGE ROAD – MOSELEY LP
FOR
MAGNOLIA GREEN
Permit Nos. 06-2748 & 16-0777**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and 6801 Woolridge Road – Moseley LP, regarding the Magnolia Green, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. “Discharge” means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
5. “Dredging” means a form of excavation in which material is removed or relocated from beneath surface waters.
6. “Excavate” or “excavation” means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. “Fill” means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. “Fill Material” means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
11. “Permit” or “Virginia Water Protection Permit” means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code (“USC”) § 1344.
12. “Pollutant” means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
13. “Pollution” means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c)

contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.

14. "Property" or "Parcel" means the tract of land known as Magnolia Green Development located north of U.S. Route 360 (Hull Street Road) and west of State Route 667 (Otterdale Road) in Chesterfield County.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Regulations" means the VWP Permit Program Regulations, 9 VAC 25-210 *et seq.*
17. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VWPP" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
24. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

25. “WRMLP” means 6801 Woolridge Road – Moseley LP a partnership and its affiliates, partners, and subsidiaries. WRMLP is a “person” within the meaning of Va. Code § 62.1-44.3

SECTION C: Findings of Fact and Conclusions of Law

1. WRMLP owns and is developing the Property in Chesterfield County, Virginia. On December 10, 2007, DEQ issued permit VWP permit 06-2748 (Permit) to Magnolia Green Development, L.L.C. The Permit was transferred twice, first to 6801 Woolridge Road – Moseley TRS, LLC on June 15, 2009, and again to WRMLP on October 23, 2013, by Change of Ownership Agreement Forms submitted to DEQ.
2. The Permit authorized the permanent impacts of 2.64 acres of forested wetlands, 0.02 acres of emergent wetlands, and 11,147 linear feet of stream channel. Additionally this project has been authorized to convert 2.39 acres of forested wetlands to emergent wetlands and temporarily impact 0.41 acres of forested wetlands and 1,065 linear feet of stream channel.
3. On April 13, 2018, the Department issued a Consent Order to WRMLP for impacts to wetlands (0.74 acre) and streams (2,115 linear feet) that were not authorized by the Permit.
4. On August 17, 2018, the Department conducted a VWPP compliance inspection at the Property in Chesterfield County. The following describe the staff's factual observations and identify the applicable legal requirements:
 - a. During the August 17, 2018 Department inspection, staff noted approximately 610 linear feet of stream bed was modified during construction of stream restoration reach M-0, and is no longer functioning as a stream. The area is upstream of stream restoration reach M-0 and is within the limits of the originally proposed Impact Q-2, which was not an authorized impact area in the September 14, 2018 permit modification.

Va. Code § 62.1-44.15:20(A) “Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 1. Excavate in a wetland; 2. On or after October 1, 2001, conduct the following in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or function; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions; or 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board.”

9 VAC 25-210-50(A) states that “Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; excavate in wetlands or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

- b. During the August 17, 2018 Department inspection, staff observed that erosion and sedimentation controls were not maintained in good working order in numerous sections of the project, resulting in sedimentation in surface waters. Downstream of Impact X-15, erosion and sedimentation controls recently failed, resulting in sedimentation impacts to approximately 1,141 linear feet of stream bed and approximately 0.20 acre of forested wetlands (downstream to Impact AC-2).

Part I.C.24 of Individual Permit 06-2748 states: "Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized."

5. On September 11, 2018, WRMLP submitted a detailed response to the August 17, 2018 Department inspection.
6. On September 14, 2018, based on the observations at the August 17, 2018 site inspection, DEQ issued NOV No. 1809-000865 to WRMLP for the violation of permit 06-2748, Part I.C.24; Va. Code § 62.1-44.15:20; and 9 VAC 25-210-50(A), described in Section C5 through C9 above.
7. On September 28, 2018, in response to the NOV, WRMLP provided a copy of the detailed September 11, 2018 response to the Department inspection. In the response, WRMLP requested a retraction to the finding of 1,141 linear feet of stream and 0.2 acre of wetland impacts. WRMLP went on to state that they did not believe that the sediment observed within the stream channel/wetland below impact X-15 is the result of a sediment release, but rather naturally occurring sediment from the stream itself, likely due to unusually heavy rainfall. WRMLP also provided the Department with updated impact maps and, based on the mapping received, construction activities have occurred within surface waters in multiple locations.

8. On September 28, 2018, Department staff conducted a site visit of the Property and discovered E&S controls that had been in need of maintenance, therefore the Department did not concur that the sedimentation was “naturally occurring.” The Department did note that not all of the total length (1,141 linear feet) of stream channel was affected.
9. November 2, 2018, WRMLP submitted a Corrective Action Plan (CAP) to the Department stating that after a review of the streams and wetlands affected by sediment deposition, it was determined that 0.02 acre of PFO wetland and 204 linear feet of stream channel was disturbed.
10. On December 17, 2018, the Department requested that WRMLP provide DEQ with monitoring details of the remediation, a compensation crediting form representing the current conditions of the 610 linear feet of channel reinforcement modified during stream restoration reach M-0, and an audit of all impacted surface waters throughout the project.
11. On January 14, 2019, WRMLP submitted a response to the December 17, 2018 Department letter. This response identified additional impacts to 93 linear feet of stream bed.
12. On February 8, 2019, the Department approved the Pine Valley Phase 2 Corrective Action Plan and approved the purchase of 97 stream mitigation credits to be purchased for the additional impacts to 93 linear feet of stream bed identified in the January 14, 2019 response. The Department also requested a mitigation plan be submitted to compensate for unauthorized impacts in Section O of Magnolia Green – Phase II and requested that findings of all re-evaluated impacts to Phase II be submitted to DEQ by March 13, 2019. In response to the 610 linear feet of channel reinforcement modified during stream restoration reach M-0, the Department confirmed that the January 14, 2019 information was received and under review.
13. On March 13, 2019, WRMLP submitted a response to the February 8, 2019 Department request. This response provided an update to the Pine Valley Corrective Action Plan; identified additional impacts to 61 linear feet of stream bed and 0.06 acre of PFO wetland in Section O of Magnolia Green – Phase II; and provided an update to the 97 USM stream mitigation credits to be purchased.
14. On March 27, 2019, WRMLP submitted the documentation of mitigation credit purchase for 97 USM stream mitigation credits from the Amelia Environmental Bank.
15. On April 1, 2019, the Department conducted a VWPP compliance inspection at the Property in Chesterfield County.
16. On April 8, 2019, WRMLP submitted corrective actions that were completed in response to the April 1, 2019 Department inspection.

17. On September 29, 2020, WRMLP submitted a Bill of Sale documenting purchase of 81 stream credits on August 27, 2020 and 0.12 non-tidal wetland credits on September 14, 2020.
18. On March 14, 2017, DEQ issued permit VWP Permit 16-0777 (Permit) to WRMLP for Phase III of the Magnolia Green residential development project. Since permit issuance, the 16-0777 Permit was modified four (4) times, with the most recent modification completed on September 22, 2020. The Permit authorizes permanent impacts to no more than 2.02 acres of forested wetlands, 0.02 acre of emergent wetland, and 7,065 linear feet of stream bed, and the permanent conversion of no more than 2.22 acres of forested wetland to emergent wetland. In addition, the Permit authorizes temporary impacts to no more than 0.15 acre emergent wetland and 384 linear feet of stream bed.
19. On November 4, 2020, WRMLP informed DEQ that they observed additional impacts due to the construction of the Phase 3C sewer extension.
20. WRMLP conducted a survey to assess and quantify the additional impact areas, and on November 12, 2020 provided DEQ with a summary of findings and a corrective action plan. Approximately 19,515 square feet of palustrine forested wetlands and 23 linear feet of stream channel were impacted by over clearing, vehicle tracking, and sediment deposition during construction of the sewer extension.
21. On December 8, 2020, the Department concurred with the corrective action plan and requested additional information from WRMLP.
22. On December 9, 2020, WRMLP provided the requested information and reported to DEQ an additional 20-25 linear feet of unpermitted stream channel impacts.
23. On December 22, 2020, the Department issued NOV No. 2012-001612 to WRMLP citing them for unpermitted impacts to wetlands and stream banks reported by WRMLP on November 4th and December 9th of 2020.
24. Based on the results of the site inspections on August 17, 2018, and April 1, 2019, review of the permit file, the September 28, 2018 meeting, and submittals received from WRMLP on September 11, 2018, November 2, 2018, January 14, 2019, March 13, 2019, March 27, 2019, November 12, 2020, and December 9, 2020, the Board concludes that WRMLP has violated VWP Permit Nos. 06-2748 & 16-0777, Permit 06-2748 condition Part I.C.24, Permit 16-0777 Part I.A & I.D.22, Va. Code § 62.1-44.15:20, and 9 VAC 25-210-50(A), as described above.
25. In order for WRMLP to complete its return to compliance, DEQ staff and representatives of WRMLP have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders WRMLP and WRMLP agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$59,975 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

WRMLP shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, WRMLP shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of WRMLP for good cause shown by WRMLP, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, WRMLP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. WRMLP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. WRMLP declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by WRMLP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. WRMLP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. WRMLP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WRMLP shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and WRMLP. Nevertheless, WRMLP agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after WRMLP has completed all of the requirements of the Order;
- b. WRMLP petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to WRMLP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WRMLP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by WRMLP and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of WRMLP certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind WRMLP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of WRMLP
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, WRMLP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

**James J.
Golden**

James J. Golden
Department of Environmental Quality
Piedmont Regional Director

Digitally signed by: James J. Golden
DN: CN = James J. Golden email = james.
golden@deq.virginia.gov C = AD O = DEQ
OU = Director of Regional Operations
Date: 2021.10.05 09:23:34 -05'00'

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6801 Woolridge Road – Moseley LP voluntarily agrees to the issuance of this Order.

Date: 7/14/2021 By: Thomas D. Page, VICE PRESIDENT
(Person) (Title)

Commonwealth of Virginia

City/County of Chesterfield

The foregoing document was signed and acknowledged before me this 14th day of

July, 2021, by Thomas D. Page who is

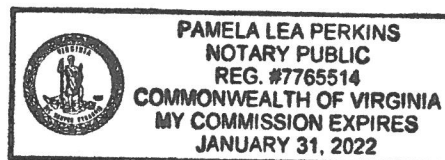
Vice President of 6801 Woolridge Road – Moseley LP, on behalf of the
company.

Pamela Lea Perkins
Notary Public

7765514
Registration No.

My commission expires: 1/31/2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

With regards to Permit 06-2748, WRMLP shall

1. Within ninety (90) days of the execution of this Order, submit to the Department a monitoring plan, to include success criteria, for a duration of no less than 2 years, for approval, for the surface waters upstream of restoration reach M-0. Upon approval by the Department, the monitoring plan shall be incorporated by reference into this schedule of compliance. At the conclusion of monitoring, if any lengths of the reach are not satisfying approved stream success criteria, then those lengths shall be quantified, and stream mitigation bank credits shall be purchased at a 0.34:1 ratio.

With regards to Permit 16-0777, WRMLP shall

2. By July 31, 2021, the Corrective Action Plan CAP submitted by WRMLP on November 12, 2020 and approved by DEQ on December 8, 2020 shall be completed. All work shall be conducted and completed pursuant to the approved CAP. Any changes to the approved Final CAP or schedule shall not be initiated without advance notice to and approval by DEQ.
 - a. If the performance criteria specified in the Final CAP are not achieved at the end of the applicable monitoring period, then WRMLP shall notify DEQ in the applicable monitoring report for that monitoring period and shall describe why it appears the criteria could not be achieved. If DEQ thereafter so directs, WRMLP shall submit to DEQ for review and approval an alternative CAP within 30 days of DEQ's letter requiring the same. The DEQ-approved alternative CAP shall then be implemented by WRMLP in accordance with the schedule set forth in the alternative CAP.
 - b. If the performance criteria specified in the Final CAP or any alternative CAP are not achieved by the end of the last monitoring period and DEQ determines that additional corrective action cannot sufficiently address the reasons for such failures, then WRMLP shall submit to DEQ for review and approval, within 30 days of such determination, a proposal to purchase mitigation bank credits or contributions to an in-lieu fee fund to address any remaining corrective action required in the Final CAP or, as applicable, any previously submitted alternate CAP. WRMLP shall respond to any DEQ notice of deficiency to the proposal in accordance with the terms of the notice. WRMLP shall purchase mitigation bank credits or make contributions to an in-lieu fund, as approved by DEQ in accordance with this paragraph, within 30 days of DEQ approval.

3. WRMLP shall monitor the success of the work until the site is stabilized in accordance with the terms of the Permit and Department approved CAP to ensure project stability.
4. Unless otherwise specified in this Order, WRMLP shall submit all requirements of Appendix A of this Order to:

Frank Lupini
Enforcement Specialist
VA DEQ –Piedmont Regional Office
4949A Cox Road,
Glen Allen, Virginia 23060
Frank.Lupini@deq.virginia.gov